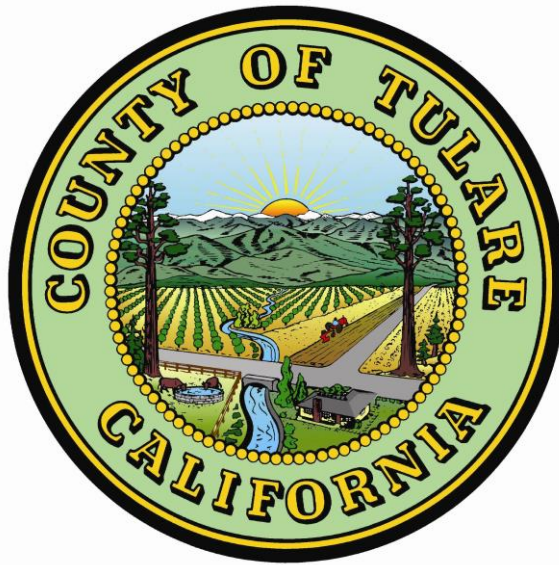


REQUEST FOR STATEMENTS OF QUALIFICATIONS



ARCHITECTURAL AND ENGINEERING DESIGN SERVICES

FOR

TRANSIT OPERATIONS AND MAINTENANCE FACILITY

DECEMBER 2015

**SUBMITTALS DUE JANUARY 14, 2016 BY 5:00 PM
PRE-PROPOSAL CONFERENCE DECEMBER 17, 2015 AT 2:30 PM**

ISSUED BY:

Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277

This RFQ and enclosures and relevant project information are available at the County of Tulare website at: <http://www.tularecounty.ca.gov/rma/index.cfm/public-works/public-works-projects/request-for-proposals-for-engineering-services/>

REQUEST FOR STATEMENTS OF QUALIFICATIONS

I. PURPOSE

Tulare County has received grant funding of approximately \$10.2 million total from a variety of sources to design and construct a new Transit Operations and Maintenance Facility (the “TOMF”) for Tulare County Area Transit (TCaT). This new facility will be constructed on an undeveloped 19-acre parcel of land located adjacent to the existing County of Tulare’s Road Yard located at 14001 Avenue 256, Visalia, CA 93292. See **Attachment A** for a Vicinity Map showing the project location. It will be designed for the maintenance of TCaT’s fleet and to comfortably accommodate employees and drivers in a modern and operationally efficient floor plan.

The County issuing this Request for Statement of Qualifications (RFQ) to find consultants for professional architectural and engineering design services for the TOMF. These services will include planning, developing biddable construction documents, specifications, and plans, and creating a construction cost estimate. It will also include providing professional assistance during the bidding process, bid evaluation, and assistance with the selection of a construction contractor. Services during the construction phase will include submittal review and field observations, as needed.

II. PROJECT DESCRIPTION

The TOMF is to be constructed on an approximately 15 acres out of a 19-acre parcel of land per the 2012 Facility Site Master Plan, see **Attachment B**. Further, the County has already acquired a Conditional Use Permit (CUP) for the site, see **Attachment C**. The TOMF will include the following components:

1. An Operations, Maintenance and Administration building which will house at minimum:
 - a. Dispatch and operations centers
 - b. Office space
 - c. Employee locker rooms
 - d. Break room
 - e. Restroom facilities
 - f. Maintenance bays (designed to accommodate the maintenance of both diesel and CNG vehicles and capable of accommodating 40-foot buses)
 - g. Oil and parts room
 - h. Engine and equipment steam room
2. Parking for approximately 25 buses utilizing a canopy with solar panels.
3. Accommodation for future parking for fleet expansion up to 15 buses, as available.
4. Space to accommodate up to 5 support vehicles.
5. An automated bus wash system.
6. A 500 GPM potable water well and 200,000 gallon water tank to tie in to the future expansion per the Master Plan.
7. A Storm Pond sufficient for the TOMF and expandable to meet the needs of the full master plan.

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8. Security Features, including lighting, fencing/security gates, security system, and a backup generator.
 9. Civil Improvements, including water, gas, electrical, septic/sewer, and storm drain.
 10. Site Improvements, including curb, gutter, sidewalk, roadway improvements, entrances to the facility, parking area, and landscaping.
 11. Twelve (12) slow fill CNG stations for the exclusive use of the County.
 12. Two (2) fast fill stations open to the public and including a card billing system.

Note that while the 2012 Facility Site Master Plan shows a 911 Call Center and a Communications Tower, those are not to be included in the design as part of this RFQ.

All agreements, contracts, and project work will be conducted in compliance with all Federal, State, and local overlay requirements; including any DBE, MBE, and/or WBE program. DBE program information is available in Section VII of this RFQ.

The TOMF is to be designed according to the current versions of the applicable building codes, including but not limited to the 2013 California Building Standards Codes, Title 24 of the California Code of Regulations, as amended.

Additional information:

- The project budget does/does not include office furnishings.
- The current vendor will provide most of the necessary equipment, such as lifts and tools.
- The County's buses range in size from 24 to 40 feet. However, the facility should be designed to accommodate up to a 40 foot bus.
- The underground infrastructure is to be sized and designed for a full build-out of the Central Road Yard expansion project.
- A separate fire water system will be required.

III. SCOPE OF WORK

Required services include, but are not limited to the Tasks described in this Section.

Task 1: Pre-Design and Design Development

This task is to include the following:

- Evaluate and comment on the completed 2012 Facility Site Master Plan, including its findings and recommendations, construction options, conceptual design, and project cost estimates.
- Evaluate and comment on the Preliminary Geometry and Landscaping Exhibit, see **Attachment D**.
- Evaluate and comment on the Building/Space Programming Matrix, see **Attachment E**.
- Evaluate and comment on prior plans and designs prepared for the project.
- Conduct any mapping, surveying, geotechnical investigation, or field inspections with the County, as necessary
- Prepare a Draft Memorandum of Design for County review and approval
- Prepare a Final Memorandum of Design
- Assist the County with permitting, as necessary

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- Confirm that the design and operations of the facility will be in compliance with the CUP
 - Coordinate plans and features with the firm the County retained to design the Fire Station and Fire Administration Building project shown on the 2012 Facility Site Master Plan.
 - Identify design features that may help meet future TCaT fleet needs, including the potential for a future transition to electric, hybrid, or fuel cell buses

Task 2: Schematic Design

Based on the pre-design and design development task, the Consultant will provide schematic design plans for review and preliminary project cost estimates and preliminary project construction schedule.

Task 3: Construction Document Preparation:

Consultant shall prepare 30%, 60%, 90% and final design documents based on the schematic design and feedback. Consultant shall finalize the design within the approved budget and prepare construction documents required for competitive bidding of the project. The construction documents shall include civil, mechanical, electrical, plumbing, structural, and architectural plans, details, and specifications for the TOMF, as well as plans, details and specifications for any other specialty, as needed. It will also include Onsite traffic circulation plans and roadway improvement plans along Road 140. Consultant shall prepare a 30%, 60%, 90% and final opinion of probable cost of construction based on the final construction documents. The construction documents shall be reviewed by the County prior to public availability.

The consultant shall utilize the County standard contract specification format which will be provided by the County.

Task 4: Bidding Phase Services

Consultant shall assist the County during the competitive bidding process by attending a pre-bid meeting; preparing addenda as required to clarify documents and answer bidder questions; and tabulating and evaluating the bids.

Task 5: Construction Phase Services

Consultant shall attend the pre-construction meeting; assist the County or the County's Construction Manager, should the County procure one, with construction documentation, including potentially reviewing contractor submittals, responding to Requests for Interpretations, reviewing change order requests, and providing other assistance during the construction phase, as needed.

IV. SELECTION CRITERIA AND PROCEDURE

Upon evaluation of the Statements of Qualifications (SOQs), the County will determine the three firms they feel are most qualified for this project based on the following criteria:

CRITERIA	MAXIMUM POINTS
1 Experience with similar projects	25
2 Understanding of the work to be performed and project approach	25
3 Quality of staff and demonstrated technical ability	20
4 Capability of developing innovative solutions	10
5 Financial responsibility and availability	15
6 Overall impression and responsiveness	5
Total	100

After determining the top three ranked firms, the County may choose to conduct interviews of the top three ranked firms, however the County reserves the right to make a selection based solely on the written SOQs. If the County conducts interviews, the interviewed firms will be re-ranked afterwards. The County will negotiate the final scope of work, fee, project schedule, and contract terms with the top ranked firm.

Cost Proposals and Final Scope of Work

As time is of the essence for this project, consultant shall submit a cost proposal in a separate sealed envelope to County within five (5) working days of County's request. County may request cost proposals only from the top three (3) ranked consultants. The cost proposal shall be tied to the tasks in Consultant's scope of work and shall include separate options for any optional or alternative tasks in accordance with the scope of work. The cost proposal shall provide the billing rate for each job class and an estimate of hours by job class required to complete each task. It shall be formatted in a manner that could be included as Exhibit C to **Attachment F**, the sample agreement.

Once the consultants have received their final ranking, County shall open the cost proposal for the top ranked consultant and use it to begin negotiations. The top ranked consultant will attend a meeting with County staff to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The County will provide the consultant with as much material as is available regarding the project. If agreement cannot be reached with the top ranked consultant, negotiations will proceed with the next most qualified consultant and the cost proposal for this consultant will be opened at this time.

Each consultant's cost proposal shall remain sealed until negotiations commence with that particular consultant. After an agreement with a consultant has been finalized, County shall return all remaining sealed envelopes containing cost proposals to consultants.

A formal notice to proceed to the selected consultant will occur immediately following the County Board of Supervisor's award of the contract to the selected consultant.

V. STATEMENT OF QUALIFICATIONS REQUIREMENTS AND SUBMITTAL

The following requirements are provided for standardizing the preparation and submission of Statements of Qualifications (SOQs) by all consultants. The intent is to assist consultants in the preparation of their SOQ and to assist the County and qualifications evaluation committee by providing standards for comparison of consultants' SOQs and narrowing qualification requirements.

SOQs shall contain the following information in the order listed:

1. Introductory Letter (2 pages maximum*)

The introductory (or transmittal) letter shall be addressed to:

Mr. Ross W. Miller, P.E.
Tulare County Resource Management Agency
5961 South Mooney Boulevard
Visalia, CA 93277

The letter shall include the consultant's contact name, mailing address, telephone number, facsimile number, and email address. Include the offices where work will be conducted by the consultant and listed subconsultants.

The letter shall state that the consultant and all subconsultants shall comply with all local, state and federal requirements.

The consultant shall disclose any financial, business, or other relationship with the County that may have an impact upon the outcome of the contract or the construction project. The consultant shall also list all current clients who may have a financial interest in the outcome of this contract. The letter shall also indicate any conflicts or non-acceptability of the terms and conditions of the County's proposed agreement, including all of the attachments to the agreement, see **Attachment F**. Proposed deviations and modifications to the contract agreement shall be noted and supporting reasons provided. The County will not consider changes to the agreement once consultant selection has been completed. If necessary, the proposed deviations and modifications, along with the reasoning therefor, may be attached as an appendix to the SOQ.

The letter shall be signed by a principal of the firm authorized to legally bind the firm. Unsigned SOQs or SOQs signed by an individual not authorized to bind the prospective consultant will be rejected.

* If the proposed deviations and modifications, with supporting reasons, are attached as an appendix to the SOQ, the appendix will not count towards the page limit.

2. Statement of Qualifications and Experience (10 pages maximum) and List of Vital Personnel

Identify consultant's Project Director, Project Manager, Project Engineer(s), subconsultants and other vital personnel. Describe the responsibilities of each and show the relationships on an Organizational Chart. Include previous project experience similar to the subject project (with special attention to regional projects), ability, and capacity for undertaking and performing the work. Identify the current availability of all vital personnel. The County must approve any changes in vital personnel and sub consultants after the award of contract before any change can be made.

Provide project descriptions, contact names, current email addresses, and current telephone numbers for three (3) references of similar project experience that illustrates the quality and past performance of the project team.

Provide a list of all vital personnel in accordance with the County's proposed agreement, see **Attachment F**, including each individual's name, company, project position, email address, phone number, and address. The list shall be formatted in such a manner that it can be included into and provided in an electronic file type compatible with Microsoft Word. Resumes for these vital personnel only may also be provided in an appendix to the SOQ. Resumes shall be limited to two pages per person and do not count towards the page limit for this section.

3. Project Understanding (8 pages maximum)

Describe consultant's understanding of the project. Identify the possible and or recommended approach and procedure for accomplishing the project goals. Discuss potential hurdles and critical tasks applicable to the project. You may also describe how your team is best suited to address the key issues.

4. Proposed Scope of Work

The proposed scope of work shall address the tasks identified in this RFQ. Other tasks, items of work or services which the consultant believes are applicable to the project may also be included. The Scope of Work shall include a schedule, tied to the date of the execution of the contract with the consultant which shows the anticipated completion times for each task. The scope of work shall be formatted in such a manner that it can be included into the County's standard contract and provided in a file type compatible with Microsoft Word.

SOQ Submittal Delivery

All SOQ submittals, consisting of one (1) signed original, five (5) copies, and one (1) electronic copy (on a flash drive) of the Statement of Qualifications, one (1) electronic copy of the List of Vital Personnel (provided on the same flash drive), one (1) electronic copy of the Scope of Work (provided on the same flash drive), and one (1) completed original of the "*Consultant Proposal DBE Commitment*" form (Caltrans Local Assistance Procedure Manual Exhibit 10-O1), shall be delivered in a sealed package. SOQ packages shall be clearly marked with the firm's name and

“TOMF – Architectural and Engineering Services Proposals” and shall be delivered to the County in person or by mail at the following location:

Tulare County Resource Management Agency
5961 South Mooney Boulevard
Visalia, CA 93277
Attn: Ross W. Miller, P.E.

SOQ packages must be received at that prescribed location no later than the date and time described in Section VI of this RFQ. SOQ packages received after the time and date specified will not be considered and will be returned unopened. Any SOQ received prior to the time and date specified above may be withdrawn or modified by written request of the proposer so long as the modified SOQ is received prior to the time and date specified. SOQs and submittals that do not conform to the requirements, including page limits, will be rejected.

VI. ANTICIPATED SCHEDULE

Issue RFQ	December 8, 2015
Pre-Proposal Conference	December 17, 2015, at 2:30 PM
Written Questions Due	January 7, 2016, at 5:00 PM
Statement of Qualifications Due	January 14, 2016, at 5:00 PM
Notification of Consultant Shortlist	January 22, 2016
Consultant Interviews (at the County’s Option)	January 28, 2016
Notice to Proceed	February 29, 2016
Schematic Design	April 29, 2016
60% Design	July 15, 2016
Final Bid Documents	September 30, 2016
Construction Bids Received	January 16, 2017
Construction Completed	July 2018

VII. ADDITIONAL INFORMATION

Grant Funding

Funding for the TOMF project is being provided by several sources. These sources include Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA), Congestion Mitigation and Air Quality Improvement Program (CMAQ), Tulare County Measure R, CalOES Prop 1 B Grant Program, State Transit Assistance (STA) and Local Transportation Funds (LTF). For this reason, Consultant shall submit detailed invoices with tasks and activities clearly identified and described.

Financial Management and Accounting System Requirements

The consultant must have an adequate financial management and accounting system as required by 48 CFR § 16.301-3, 48 CFR Part 31, 24 CFR Part 570, and 24 CFR § 85.20 et seq. The

County will not award a contract to a consultant that does not have an adequate financial management and accounting system.

Compensation under any contract resulting from this RFQ will be based on audited rates developed through a qualifying Tulare County or other government audit. Sub-consultants whose fee is expected to exceed \$250,000 will be subject to this same audit provision.

Disadvantaged Business Enterprise (DBE) Program Requirements

As part of the SOQ Submittal to this RFQ, the Consultant shall submit a completed original of the “*Consultant Proposal DBE Commitment*” form (Caltrans Local Assistance Procedure Manual Exhibit 10-O1). Prior to final execution of the final agreement, the selected consultant shall submit a completed original of the “*Consultant Contract DBE Information*” form (Caltrans Local Assistance Procedure Manual Exhibit 10-O2), however this form shall not be submitted as part of the SOQ Submittal. These forms are available on the RFQ website as noted elsewhere in this RFQ. The County has established a 0.00 % participation goal for the participation of DBE’s for this project. Further detail regarding the DBE program may be found in the sample agreement and in **Attachment G**, Caltrans Local Assistance Procedure Manual Exhibit 10-I Notice to Proposers DBE Information.

Pre-Proposal Conference

A conference regarding this RFQ will be held at the Tulare County Resource Management Agency Main Conference Room at Tulare County Government Plaza, 5961 South Mooney Boulevard, Visalia, CA 93277-9394 on the date and time described in Section VI. This will be the only opportunity to pose oral questions regarding this RFQ. This conference is not mandatory, but attendance is strongly encouraged. Interested parties may also attend via conference call, with call in information to follow.

Other Information

This RFQ does not commit the County to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The County reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the RFQ if it is in the best interests of the County to do so.

The prospective consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the County, which will include approval by the Tulare County Board of Supervisors.

All products used or developed in the execution of any contract resulting from this RFQ will become public domain.

A sample of the proposed agreement is attached hereto as **Attachment F**. The Consultant shall adhere to the provisions of this agreement. The Consultant shall advise the County, in the proposal transmittal letter, of any provision which they cannot accept.

Contract award as a result of this RFQ will be made without discrimination based on race, color, religion, age, sex, or national origin.

This RFQ and relevant project documents are available at the County of Tulare website as noted elsewhere in this RFQ.

All questions relating to this RFQ, other than those presented pre-proposal conference, must be addressed in writing (e-mail is acceptable) to Ross W. Miller, Tulare County RMA, 5961 South Mooney Boulevard, Visalia, CA 93277 or at rmiller@co.tulare.ca.us and received no later than the time specified in Section VI. Questions received after this time will not be answered. Questions and responses will be posted on the website noted elsewhere in this RFQ. It will be the proposer's responsibility to periodically review the website for addenda and responses to questions and to review any additional information that may be provided by the County.

VIII. DISCLAIMER

A. Where funds allocated to this project are not made available, withheld, or reduced by any federal, state, regional or local government entity, the County of Tulare is under no obligation to fund this project, including, but not limited to, any agreement that may be negotiated for consulting services which is the subject of this RFQ.

B. Any consulting firm selected must, as a condition of entering into any agreement with the County, comply with any requirements imposed upon the County by any federal, state, regional or local public agency or entity, which has agreed to provide funding for this study including, but not limited to, any agreement or amendment that may be negotiated for professional consulting services which is the subject of this RFQ.

C. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the consulting firm.

D. Selection of qualified consulting firms will be made on the basis of the proposals as submitted, although the County reserves the right to interview applicants as part of the selection process.

E. The County reserves the right to award the contract to the proposer who presents the proposal which, in the judgment of the County, best accomplishes the desired results.

F. This RFQ does not constitute an offer of employment or to contract for services.

G. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make an award, or no award, by reason of the County's judgment as to its best interests.

H. All documents submitted to the County in response to this RFQ will become the exclusive property of the County and may be returned to the proposer or kept by the County, at the sole discretion of the County.

I. All proposals shall remain firm for four (4) months, or 120 days following closing date for receipt of proposals.

J. Any contract awarded pursuant to this RFQ will incorporate the requirements and specifications contained in this RFQ. All information presented in a consulting firm's proposal will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations.

K. The selected consulting firm must be qualified to provide the requested services, able to satisfy all insurance requirements of the County, and be available to commence work according to the proposed schedule contained in this RFQ.

L. Under the provisions of the California Public Records Act (the "Act"), Government Code section 6252 et seq., all "public records" (as defined in the Act) of a local agency, such as the County, must be available for inspection and copying upon request of any person. Under the Act, the County may be obligated to provide a copy of any and all responses to this RFQ, if such requests are made after the contract is awarded. One exception to this required disclosure is information which fits within the definition of a confidential trade secret [Government Code section 6254(k)] or contains other technical, financial or other data whose public disclosure could cause injury to the proposer's competitive position. If any consulting firm believes that information contained in its response to this RFQ should be protected from disclosure, the consulting firm **MUST** specifically identify the pages of the response that contains the information by properly marking the applicable pages and inserting the following notice in the front of its response:

NOTICE: The data on pages [__] of this response identified by an asterisk (*) contain technical or financial information, which are trade secrets, or information for which disclosure would result in substantial injury to the consulting firm's competitive position. Proposer requests that such data be used only for evaluation of the response, but understands that the disclosure will be limited to the extent the County considers proper under law. If an agreement is entered into with the consulting firm, the County shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.

The County will not honor any attempt by a consulting firm to designate its entire proposal as proprietary. If there is any dispute, lawsuit, claim or demand as to whether information within the response to the RFQ is protected from disclosure under the Act, consulting firm shall indemnify, defend, and hold harmless, the County arising out of such dispute, lawsuit, claim or demand.

ATTACHMENT A
VICINITY MAP

ATTACHMENT B
2012 FACILITY SITE MASTER PLAN

ATTACHMENT C
CONDITIONAL USE PERMIT (CUP)

ATTACHMENT D

PRELIMINARY GEOMETRY AND LANDSCAPING EXHIBIT

ATTACHMENT E
BUILDING/SPACE PROGRAMMING MATRIX

ATTACHMENT F
PROPOSED AGREEMENT

**AGREEMENT FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING
SERVICES FOR THE DESIGN OF A TRANSIT OPERATIONS AND MAINTENANCE
FACILITY**

THIS AGREEMENT, is entered into as of _____, between the COUNTY OF TULARE, referred to as "COUNTY", and _____, referred to as "CONSULTANT", incorporated within the State of _____ in _____, with reference to the following:

WHEREAS,

A. COUNTY has received funding from various sources to design and construct a Transit Operations and Maintenance Facility ("TOMF"), including Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA), Congestion Mitigation and Air Quality Improvement Program (CMAQ), Tulare County Measure R, CalOES Prop 1 B Grant Program, State Transit Assistance (STA) and Local Transportation Funds (LTF) (collectively referred to as the "Funding Sources").

B. COUNTY has requested proposals for professional architectural and engineering services related to the design of the TOMF. These services are to also include Pre-Design and Design Development, Schematic Design, Construction Document Preparation, Bidding Phase Services, and Construction Phase Services. This may include preparation of progress and final reports or similar evidence of attainment of the agreement objectives.

C. CONSULTANT's response indicates that it possesses the professional qualifications, relevant experience and demonstrated competence to provide such services.

ACCORDINGLY, IT IS AGREED:

1. SERVICES. CONSULTANT will provide professional engineering services, more particularly described in Exhibit A ("SCOPE OF WORK"). All work performed and billed to COUNTY by CONSULTANT shall be grant eligible under the funding sources, unless otherwise directed by the COUNTY, in writing.

2. TIME FOR PERFORMANCE/TERM. Time is of the essence in this Agreement. The services as described in Exhibit A of this agreement, will commence within five days of receipt of a written notice to proceed issued following acceptance of this Agreement by the COUNTY. The schedule is detailed in Exhibit B of this agreement and this agreement shall terminate according to the schedule. Mutually acceptable changes in the scope, character, or

complexity of the work if such changes become desirable or necessary as the work progresses will be accommodated by a supplemental agreement. An appropriate extension of time may be made in the form of a supplemental agreement in case of unavoidable delays. Corresponding warranted adjustments in payment will be made based upon the incorporated rate schedule.

3. COMPENSATION. The method of payment for this contract will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in Exhibit C, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in Exhibit C. In the event, that COUNTY determines that a change to the work from that specified in Exhibit C and the contract is required, the contract time or actual costs reimbursable by COUNTY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of **\$(AMOUNT)**. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit C.

When milestone cost estimates are included in Exhibit C, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, COUNTY shall have the right to delay payment or terminate this Contract in accordance with the Termination provisions of this agreement.

No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for Exhibit C and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

Benjamin Ruiz, Jr., P.E.
Assistant Director for Public Works
Tulare County Resource Management Agency
5961 South Mooney Boulevard
Visalia, CA 93277

Fax No.: (559) 730-2653 Confirming No.: (559) 624-7000,
Email: bruiz@co.tulare.ca.us

The total amount payable by COUNTY including the fixed fee shall not exceed **\$(Amount)**.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COUNTY's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4. COMPLIANCE WITH LAW. CONSULTANT will provide the services called for under this Agreement in accordance with applicable federal, state, and local laws, regulations and directives. With respect to CONSULTANT's employees, CONSULTANT will comply with all laws and regulations pertaining to wages and hours (including prevailing wage rates where applicable), state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

5. BOOKS, DOCUMENTS, PAPERS, AND RECORDS. CONSULTANT will maintain complete and accurate books, documents, papers and records with respect to the services rendered and the costs incurred under this Agreement, including records with respect to

any payments to employees or subcontractors. All such records will be prepared in accordance with generally accepted accounting procedures, will be clearly identified, and will be kept readily accessible. Upon request, CONSULTANT will make such records available for inspection by the County, State, the Comptroller General of the United States, all of the Funding Sources, other jurisdictional agency, or duly authorized representatives for the purpose of making audit, examination, excerpts, and/or transcriptions of such records during the agreement period and continuing for a period of five (5) years from the date of final payment under this Agreement. The requirements of this section shall also apply to any subconsultants or subcontractors of CONSULTANT who perform work or receive payment in connection with this Agreement.

6. PERFORMANCE REQUIREMENTS. CONSULTANT shall be held to the same goals, milestones, performance measurements, laws, regulations, and requirements as entered into by COUNTY in its various Funding Sources agreements.

7. INDEPENDENT CONTRACTOR STATUS. CONSULTANT will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement may be construed to constitute CONSULTANT or any of its agents, employees or officers as employees or officers of COUNTY. CONSULTANT agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. CONSULTANT will be solely responsible for determining the means and methods of performing the specified services, and COUNTY will have no right to control or exercise any supervision over CONSULTANT as to how the services will be performed. COUNTY will not:

- a. Withhold FICA (Social Security) from CONSULTANT's payments.
- b. Make state or federal unemployment insurance contributions on CONSULTANT's behalf.
- c. Withhold state or federal income tax from payments to CONSULTANT.
- d. Make disability insurance contributions on behalf of CONSULTANT.
- e. Obtain unemployment compensation insurance on behalf of CONSULTANT.

Notwithstanding this independent contractor relationship, COUNTY reserves the right to monitor and evaluate the performance of CONSULTANT for the purpose of assuring compliance with this Agreement.

8. NON-ASSIGNABILITY AND SUBCONTRACTING. Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and

obligations hereunder. Consultant agrees to be fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant .

Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill and expertise of CONSULTANT and no part of this Agreement may be assigned by CONSULTANT, except that services may be subcontracted to reputable and qualified subcontractors as otherwise provided for in this agreement. Subcontracts exceeding \$25,000 in cost shall contain all provisions of this agreement. Any substitution of subconsultants must first be approved in writing by the COUNTY's Contract Administrator.

9. INSURANCE. Prior to approval of this agreement by the COUNTY, CONSULTANT shall file with the COUNTY's Resource Management Agency evidence of required insurance as set forth in Exhibit D, "INSURANCE REQUIREMENTS," Exhibit D attached, which outlines the minimum scope, specifications and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in INSURANCE REQUIREMENTS Exhibit D shall not be used to reduce limits available to COUNTY as an additional insured from the CONSULTANT's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this Agreement.

10. INDEMNIFICATION: CONSULTANT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the willful misconduct, or the negligent acts or omissions, of CONSULTANT or its agents, officers and employees under this agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, any claims made against COUNTY alleging civil rights violations by CONSULTANT under Government Code sections 12920 et seq. (California Fair Employment and Housing Act). The indemnification obligation shall continue beyond the term of this

Agreement as to any willful misconduct, errors, omissions, or negligent acts occurring under this Agreement or any extension of this Agreement.

11. TERMINATION. The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

(a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to the CONSULTANT the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT in accordance with this Agreement. No Sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONSULTANT or anyone acting on CONSULTANT's behalf, as to any matter related in any way to COUNTY's retention of CONSULTANT, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONSULTANT to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach,

the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within FIVE (5) days of written notice specifying the breach. If the breach is not remedied within that FIVE (5) day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination. COUNTY will pay to the CONSULTANT the compensation earned for work performed and not previously paid to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all reports and other documents prepared by CONSULTANT by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONSULTANT's SCOPE OF WORK exceeds the unpaid balance of the agreement, the CONSULTANT must pay the difference to the COUNTY. Sanctions taken will be possible rejection of future proposals based on specific cause of non-performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONSULTANT's services have been terminated by the COUNTY, said termination will not affect any rights of the COUNTY to recover damages against the CONSULTANT.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONSULTANT's services are to be performed, may immediately suspend performance by CONSULTANT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONSULTANT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

12. ENTIRE AGREEMENT REPRESENTED. This Agreement represents the entire agreement between CONSULTANT and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

13. HEADINGS. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

14. NOTICE. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Resource Management Agency
Attention: Benjamin Ruiz Jr., Contract Administrator
5961 South Mooney Boulevard
Visalia, CA 93277

Fax No.: (559) 730-2653 Confirming No.: (559) 624-7000,
Email: bruiz@co.tulare.ca.us

CONSULTANT:

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail will be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph. The above stated CONSULTANT address is to be the main working office location for the duration of this agreement.

15. CONSTRUCTION. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 will not apply to address and interpret any uncertainty.

16. NO THIRD PARTY BENEFICIARIES INTENDED. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy. The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, COUNTY shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission,

percentage, brokerage fee, gift, or contingent fee. The COUNTY warrants that they have not required the Consultant to employ or retain any company or person, or to pay or agree to pay any firm, person or organization, any fee, contribution donation or consideration of any land, contingent upon or resulting from the award or formation of this agreement.

17. JURISDICTION/VENUE. This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement must be brought in Tulare County California. CONSULTANT waives the removal provisions of California code of Civil Procedure Section 394.

18. WAIVERS. The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

19. EXHIBITS AND RECITALS. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

20. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY. This Agreement is subject to all applicable laws and regulations. If any provisions of this Agreement are found by any court or other legal authority, or are agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

21. FURTHER ASSURANCES. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to effect the purposes of this Agreement.

22. ASSURANCES OF NON-DISCRIMINATION. CONSULTANT will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

23. PROFESSIONAL STANDARDS. By submitting final documents for approval by COUNTY, CONSULTANT represents that said documents are accurate. CONSULTANT will be responsible to COUNTY for the professional quality, adequacy, and completeness of the

services, studies, and reports provided, and represents that such services, studies and reports will be suitable for the intended purposes.

CONSULTANT will perform the services provided in this Agreement in a manner consistent with the professional skill and care ordinarily exercised by expert members of the planning, engineering, architectural, and environmental profession practicing in the State of California under similar conditions.

Where applicable and in accordance with California law, the responsible engineer or architect shall sign and seal plans, specifications, estimates, reports and engineering data furnished by him/her.

24. VITAL PERSONNEL. Personnel listed in Exhibit E are considered the vital personnel on the CONSULTANT's project team. The Contract Administrator must be notified of any intended changes to the list and given an opportunity to object and to discuss any concerns or objections. Vital personnel are defined as any CONSULTANT employee or subcontractor or subconsultant of CONSULTANT that are authorized by CONSULTANT to represent CONSULTANT in dealings with the COUNTY.

25. COMPUTER SERVICES. The CONSULTANT shall provide computer services as shown in Exhibit F.

26. PATENT RIGHTS AND COPY RIGHTS. Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall apply to this agreement. The COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the COUNTY shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

27. OWNERSHIP OF DOCUMENTS. Tracings, plans, specifications, maps and reports prepared or obtained under the terms of this agreement shall be delivered to and become the property of the COUNTY, and basic survey notes and sketches, charts, computations, and other data prepared or obtained under this agreement shall be made available, upon request, to the COUNTY without restriction or limitation on their use. COUNTY will indemnify and hold CONSULTANT harmless for any reuse by COUNTY of documents produced under this agreement for any other projects without the written approval of CONSULTANT. Final reports shall be provided to COUNTY in hardcopy and in electronic Portable Document File (PDF) format. Other electronic files shall be provided in electronic format using standard software.

28. EQUIPMENT PURCHASE. Prior authorization in writing by the COUNTY's Contract Administrator shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

Prior to seeking authorization by the COUNTY's Contract Administrator for the purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding \$5,000, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the COUNTY elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5000.00 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

29. DISPUTES. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY's Contract Administrator and the Assistant Director – Public Works, who may consider written or verbal information submitted by the CONSULTANT.

Not later than 30 days after completion of all work under contract, the CONSULTANT may request review by the County Board of Supervisors of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

30. CONFIDENTIALITY OF DATA. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

Permission to disclose information on one occasion or by public hearing held by the COUNTY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from Legislative committee.

CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY and receipt of the COUNTY's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this article.

31. CONFLICT OF INTEREST. CONSULTANT shall disclose any financial, business, or other relationship with the County that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.

CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this article.

CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with CONSULTANT providing services on this project will bid on any construction contract, or any contract to provide construction inspection for any construction

project resulting from this agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultants who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or any contract to provide construction inspection for any construction project resulting from this agreement.

32. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. CONSULTANT warrants that this contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion to terminate the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

33. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING. CONSULTANT certifies to the best of his or her knowledge and belief that:

a. No state, federal or COUNTY appropriated funds have been paid, or will be paid by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure From to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

34. AUDIT REVIEW PROCEDURES. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by COUNTY's Chief Accounting Officer.

Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by COUNTY's Chief Accounting Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

CONSULTANT's and its subcontractors' and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

35. CLAIMS FILED BY CONSTRUCTION CONTRACTOR. If claims are filed by COUNTY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available

for consultation with COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

CONSULTANT's personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.

Services of CONSULTANT's personnel in connection with COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

36. LIQUIDATED DAMAGES. The parties agree that time is of the essence regarding completion of the project pursuant to this Agreement. If the project is not completed according to the SCOPE OF WORK and the Project Timeline, delay will constitute a breach of contract by CONSULTANT. Such breach will cause a hardship upon COUNTY and there will be extreme difficulty and uncertainty in fixing the actual damages to COUNTY at the time of such breach. "Actual damages" from CONSULTANT's breach of project completion date include but are not limited to monetary damages, COUNTY's loss of good will or credibility with other parties COUNTY contracts with, and future loss of funding to COUNTY. The parties hereby agree to reasonable liquidated damages based on the circumstances existing at the time this Agreement is entered into. As such, if CONSULTANT breaches the promise to complete the project in accordance with the SCOPE OF WORK and the Project Timeline, then CONSULTANT must pay the sum of \$500 per calendar day of delayed completion to COUNTY as reasonable liquidated damages. The parties do not consider these amounts to be penalties. The parties agree that the liquidated damages set forth in this Section do not include damages sustained by COUNTY as a result of COUNTY paying excess of the cost of this Agreement when COUNTY terminates pursuant to Section 11, "TERMINATION," and finishes the SCOPE OF WORK. If COUNTY terminates in accordance with Section 12, "TERMINATION," and finishes the SCOPE OF WORK, CONSULTANT will pay COUNTY the cost to complete the SCOPE OF WORK that exceeds the cost of this Agreement, in addition to any liquidated damages for delayed project completion set forth in this section.

COUNTY will deduct liquidated damages determined by this Section from any retention or amount due to CONSULTANT pursuant to this Agreement, and will bill CONSULTANT for

any liquidated damages in excess of retention or amounts due to CONSULTANT. CONSULTANT will pay COUNTY within thirty (30) days of receiving a bill for liquidated damages.

If COUNTY partially causes the delay of CONSULTANT's completion of the project pursuant to this agreement, the liquidated damages owed by CONSULTANT will not include days of delayed completion caused by COUNTY. The Tulare County Resource Management Agency Director may choose to grant CONSULTANT extensions of time for the number of days of delayed completion caused by COUNTY.

Liquidated damages will not be assessed against CONSULTANT when the delay in completion of the work is due to unforeseeable cause beyond the control and without the fault or negligence of the CONSULTANT.

In the event this liquidated damages clause is not upheld, COUNTY may seek actual damages for delayed completion caused by CONSULTANT. Notwithstanding the breach of project completion date addressed in this Section COUNTY may recover actual damages for any other breaches of this Agreement by CONSULTANT.

37. FEDERAL ENVIRONMENTAL STANDARDS, ORDERS, AND REQUIREMENTS. CONSULTANT and the COUNTY agree that all work to be performed under this Agreement must comply with all applicable federal environmental standards, orders, or requirements, including, but not limited to, those issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

38. ENERGY EFFICIENCY. CONSULTANT and the COUNTY agree that all work to be performed under this Agreement must comply with any and all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

39. LOSS OF FUNDING: It is understood and agreed that if the funding is either discontinued or reduced for this project for COUNTY, that COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

40. DBE PARTICIPATION REQUIREMENTS. The County has established a 0.00 % participation goal for the participation of DBE's for this Agreement. The Consultant shall be fully informed respecting Part 26, Title 49, Code of Federal Regulations, which is incorporated

by reference, and is urged to obtain DBE participation. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or Consultant Contract information (Exhibit 10-O2). For contracts with no DBE contract goal, only Exhibit 10-O2 must be included by the Consultant.

It is the policy of the County that certified DBE firms shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The Consultant shall ensure that certified DBE firms, as defined in said Code of Federal Regulations, have the maximum opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant. Failure to carry out the requirements of this paragraph shall constitute a breach of the Agreement and may result in termination of this Agreement or such other remedy the County may deem appropriate.

If DBE participation is obtained, the Consultant shall maintain records of all subconsultant agreements entered into with DBE subconsultants and records of materials purchased from DBE suppliers. Such records shall show each subconsultant's and vendor's name and address and the actual dollars paid to each. Upon completion of the Agreement, a summary of these records shall be prepared, certified correct and submitted on the form "FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST – TIER SUBCONTRACTORS" Form 17-F of the LAPM, or equivalent, by the Consultant to the County's Contract Administrator showing total dollars paid to each DBE subconsultant and supplier.

Any DBE firm working as a subconsultant under this Agreement must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

The Consultant shall make every reasonable effort to replace a certified DBE firm that is unable to perform the provisions of this contract with another certified DBE firm.

The "Notice To Proposers Disadvantaged Business Enterprise Information" (Exhibit 10-I of the LAPM) is included in this Consultant contract.

41. FUNDING REQUIREMENTS. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County governing board that may affect the provisions, terms, or funding of this contract in any manner

It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

County has the option to void the contract under the 30-day termination clause pursuant to Article 11 of this agreement, or by mutual agreement to amend the contract to reflect any reduction of funds.

41. SAFETY. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

42. DEBARMENT AND SUSPENSION. Consultants signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official

misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosure must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by General Services Administration are to be determined by the Federal Highway Administration.

43. NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappeasable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

44. INSPECTION OF WORK. Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this contract, to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

45. RETENTION OF FUNDS. No retainage will be withheld by the Resource Management Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime Consultants and subconsultants.

46. EVALUATION OF CONSULTANT. Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

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THE Parties, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By _____
Chairman, Board of Supervisors

ATTEST: _____,
County Administrative Officer/
Clerk of the Board of Supervisors

By _____
Deputy Clerk

CONSULTANT

By _____

Title _____

By _____

Title _____

Approved as to Form
County Counsel

By _____
Deputy

EXHIBIT A

SCOPE OF WORK

(To be provided by CONSULTANT)

EXHIBIT B

SCHEDULE

Notice to Proceed	February 29, 2016
Schematic Design	April 29, 2016
60% Design	July 15, 2016
Final Bid Documents	September 30, 2016
Construction Bids Received	January 16, 2017
Construction Completed	July 2018

EXHIBIT C

COMPENSATION FOR CONSULTANT'S SERVICES

(To be provided by CONSULTANT)

EXHIBIT D

SAMPLE INSURANCE REQUIREMENTS

PROFESSIONAL SERVICES CONTRACTS

INSURANCE REQUIREMENTS

CONSULTANT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONSULTANT, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the CONSULTANT's profession, with limit no less than \$2,000,000 per occurrence or claim, \$4,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CONSULTANT must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT.*
 - b. *For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONSULTANT, its employees, agents and subcontractors.

- a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONSULTANT, its employees, agents and subcontractors. CONSULTANT waives all rights against the County and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

F. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONSULTANT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

EXHIBIT E

VITAL PERSONNEL

(To be provided by CONSULTANT)

EXHIBIT F

COMPUTER SERVICES

Item	Format/Denotation
Email	Required for each of the “Vital Personnel” listed
Computer Aided Drafting	Auto Cad
Word Processing	MS Word
Spreadsheet	MS Excel
Project Schedule	MS Excel or MS Project

ATTACHMENT G

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION